

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

**FILED**

U.S. DISTRICT COURT  
MIDDLE DISTRICT OF TENN.

MAR 16 2005

BY *[Signature]*  
DEPUTY CLERK

EDWIN BORLAY, et al,

Plaintiffs,

vs.

PRIMUS AUTOMOTIVE FINANCIAL  
SERVICES, et al,

Defendants.

CASE NO. 3:02-0382

EXCERPT OF PROCEEDINGS  
VOLUME A

BEFORE: THE HONORABLE ALETA A. TRAUGER

DATE: MARCH 16, 2005

TIME: 9:00 A.M.

REPORTED BY: BEVERLY E. "BECKY" COLE, RPR CCR  
OFFICIAL COURT REPORTER  
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1                   THE COURT: Thank you for those closing  
2 arguments. They have reinforced my view of what I'm going  
3 to do in this case. I came out of the trial with this view.  
4 I have spent days reviewing the evidence, and the arguments  
5 have, as I say, reinforced my view.

6                   I will be issuing an injunction in this case.  
7 However, this is what I would like to do from this point on.  
8 Before issuing what will be a lengthy, I hope well reasoned  
9 and well supported decision, supporting my issuance of the  
10 injunction, I would like for the parties to attempt  
11 something.

12                  I guess I'm jumping over your first step,  
13 Mr. Watkins, and if I end up issuing an opinion, I will give  
14 you an opportunity to give me revised findings of fact that  
15 are supported by not -- not the things that were filed  
16 before the trial but basically the testimony in the trial,  
17 and the exhibits in the trial, and post-trial briefs; I will  
18 give both parties an opportunity to do that.

19                  However, this is what I would like for you to  
20 engage in for 30 days, and that is an effort to structure  
21 relief.

22                  And you gave me some nice quotes from case law this  
23 morning, Mr. Watkins, that reinforced that that's what I  
24 would like to happen in this case. And let me preface this  
25 with the fact that the defendants by agreeing to the

1 structure of the relief would not be waiving their right to  
2 appeal my decision, of course.

3           However, as the Brown vs. Board of Education said,  
4 equitable remedies are a special blend of what's necessary,  
5 fair and workable. And the parties, especially the  
6 defendant knows a whole lot better what is workable than the  
7 court does.

8           The Parma case talks about preserving the freedom  
9 and flexibility of the defendant. I would like to do that  
10 to the extent that we can.

11           And I would like to be no more intrusive than  
12 necessary. And so it seems to me that therefore the  
13 parties, particularly Primus, is in the best position to  
14 discuss with the plaintiffs the appropriate relief that  
15 could be ordered in this case if I end up having to do that.

16           Obviously, there's the possibility that in having  
17 these discussions, you will settle the case, and I will  
18 never enter an opinion or an injunction.

19           At this point, it might be the plaintiffs that  
20 would be more resistant to that than the defendants,  
21 although I have observed the dynamic to be the opposite  
22 before trial. However, one always leaves open that  
23 possibility.

24           I would like to give you until April 18 to give me  
25 a joint proposal about how the remedy could be structured in

1 this case. I would like to have by April 4 a status report  
2 as to whether you are making progress on that request of the  
3 court.

4 If you have come to total loggerheads and all we're  
5 headed for is an appeal of my decision, then I want to know  
6 that so that I can then set a schedule for the filing of  
7 proposed findings of fact and post-trial briefs.

8 So I would like a status report by April 4. I  
9 would like an agreed joint proposal on the structure that  
10 the remedy might take in this case.

11 I fervently hope that you will engage in good faith  
12 discussions about this remedy. I am of the opinion that  
13 courts ought not to overly intrude and tinker in the details  
14 of something like this. I would much prefer that I get a  
15 proposal from the parties here.

16 However, if I am put to it, I will decide how I  
17 will structure the remedy in this case. What I have decided  
18 is that the plaintiffs have proved their case and that they  
19 will win in my decision.

20 So I will issue a brief order that sets out this  
21 procedure. I'm not going to set the briefing schedule at  
22 this point. I will set it at a later point.

23 So I appreciate your all coming back today and  
24 engaging in what was a process I felt I needed to have  
25 before making this ruling. So we're in recess.

## REPORTER'S CERTIFICATE

I, BEVERLY E. "BECKY" COLE, Official Court Reporter  
for the United States District Court for the Middle District  
of Tennessee, with offices at Nashville, do hereby certify:

That I reported on the stenotype shorthand machine  
the proceedings held on March 16, 2005, in the matter of  
EDWIN BORLAY, et al vs. PRIMUS AUTOMOTIVE FINANCIAL  
SERVICES, INC. et al; Case No. 3:02-0382;

That an excerpt from said proceedings in connection  
with the hearing was reduced to typewritten form by me;

That the foregoing transcript is a true and accurate  
record of the proceedings to the best of my skills and  
abilities;

This the 16th day of March, 2005.

  
Beverly E. Cole, RPR CER